

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER A. JONES,

Plaintiff,

vs.

HOWARD SKOLNIK, *et al.*,

Defendants.

3:10-cv-00162-LRH-VPC

ORDER

This a *pro se* civil rights action filed pursuant to 42 U.S.C. § 1983, by a Nevada state prisoner. By order filed December 28, 2010, the Court dismissed with prejudice several counts of the first amended complaint and allowed other counts to proceed. (ECF No. 15). Plaintiff has brought a motion for reconsideration pursuant to Rule 59(e). (ECF No. 20).

Rule 59(e) of the Federal Rules of Civil Procedure provides that any “motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999).

In the instant case, plaintiff challenges an order that was filed December 28, 2010. (ECF No. 15). This Court received plaintiff’s motion for reconsideration on January 20, 2011. (ECF No. 20). Pursuant to the “mailbox rule,” federal courts deem the filing date of a document as the date that it was given to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 270 (1988). Plaintiff

1 signed the motion on January 17, 2011, which is the first date on which he could have mailed or
2 handed the motion to a correctional officer for mailing to this Court. (Docket #20, at p. 16). The
3 Court therefore deems the date of filing of plaintiff's motion for reconsideration as January 17,
4 2011. Even given the application of the "mailbox rule," plaintiff's motion is untimely, as it was not
5 filed within 10 days after entry of the challenged order. In addition, plaintiff has failed to make an
6 adequate showing under 59(e) that this Court's order filed December 28, 2010, should be altered or
7 reversed.

8 **IT IS THEREFORE ORDERED** that plaintiff's motion for reconsideration (ECF No. 20)
9 is **DENIED**.

10 Dated this 5th day of February, 2011.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE